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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,085	08/22/2001	Rudiger Schutte	32301W198	7366

7590 05/29/2007
Smith, Gambrell & Russell, LLP
Suite 800
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Washington, DC 20036

EXAMINER

LEUNG, JENNIFER A

ART UNIT	PAPER NUMBER
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1764

MAIL DATE	DELIVERY MODE
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 09/934,085</p>	<p>Applicant(s) SCHUTTE ET AL.</p>	
	<p>Examiner Jennifer A. Leung</p>	<p>Art Unit 1764</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 19-21, 26-32 and 35.
Claim(s) rejected: 17, 23-25, 33 and 36.
Claim(s) withdrawn from consideration: 1-5 and 7-16.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
see continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

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Continuation of Item 11.

The request for reconsideration has been considered, but it does not place the application in condition for allowance, for the same reasons set forth in the final Office Action.

In the rejection, the Examiner has referred to the “wall elements” as comprising every other plate in the stack, and in particular, the combustion plates 2/20 in the stack (FIGs. 1, 2, 7). As seen in the figures, each of the combustion plates 2/20 is spaced apart from another of the combustion plates 2/20, by the reforming plates 1/22 interposed therebetween. In addition, the Examiner has referred to the “plurality of slot-shaped reaction spaces” as comprising the fluid flow paths 3/23 in the reforming plates 1/22.

Beginning at page 10, line 12, and ending on page 12, line 19, of the response, Applicants do not address the rejection as presented by the Examiner. Instead, Applicants appear to base their argument on a re-labeling of the claim elements in the rejection. In particular, Applicants argue that the “wall elements” comprise every plate in the stack, i.e., both the combustion plates 2/20 and the reforming plates 1/22. With this re-labeling of the claim elements, the apparatus of Furuya would not anticipate the claims, since the wall elements would not be spaced apart, but they would be in direct contact with one another.

Although Applicant’s argument has been fully considered, the argument is moot because the rejection has been based on the Examiner’s labeling of the claim elements, and not Applicant’s re-labeling of the claim elements.

Beginning on page 12, line 20, and ending on page 14, line 8, Applicants do address the rejection as presented by the Examiner. In particular, Applicants argue that Furuya et al. fails to anticipate the subject matter of Claim 17,

“...because channels 3 or 23 are not formed between lateral surfaces of two spaced apart wall elements made of plates 2 or 20.

Each of the channels 3 in Figure 2 of *Furuya, et al.*, is formed on only one plate and does not border on a second plate 2 that is spaced apart from the first plate.

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The same is also true for channels 23 in Figure 7, which channels are formed on only one plate 20 and are not bordering a second plate 20 that is spaced apart from the first one.

The term "formed between lateral surfaces" in present Claim 17(a) requires the reaction spaces to be formed with the involvement of the surfaces and, therefore, a reaction space, which is somewhere between the wall elements, but not in contact with the surfaces, cannot read on this feature."

The Examiner respectfully disagrees. Because each channel 3/23 is located between two plates 2/20 in the stack, each channel 3/23 will be located between the lateral surfaces of the two plates 2/20 in the stack (see FIGs. 2, 7). It is noted that the features upon which applicant relies (e.g., each of said slot-shaped reaction spaces being *formed by the lateral surfaces* of two spaced apart, substantially equally large and substantially right-parallelepipedal wall elements) are not recited in the rejected claim(s).

Jennifer A. Leung
May 23, 2007

JAL



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